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## Insolvency Law and Joint Family Property.

[*Sat Narain* v. *Behari Lal,* 47 M. L. J. 857.]

Their Lordships' pronouncement in this case is clear and definite on one point, viz., in so far as they decide that an order of adjudication passed against a Hindu father does not vest in the Official Receiver his son's interest in the joint family property. Though, in the course of the judgment, emphasis is more than once laid on the particular terms of the Presidency Towns Insolvency Act, the tenor of the discussion does not seem to countenance the maintainability of a different view in respect of adjudications under the Provincial Insolvency Act. There is of course this distinction between the two Acts, namely, that there is nothing in the Provincial Act corresponding to S. 52 of the Presidency Act which draws a distinction between the "property" belonging to the insolvent and "the capacity to exercise" any power which might have been exercised by the insolvent for his own benefit. Though the distinction between "property" and "power" is well established in the English Insolvency Law (cf. *Ex parte Gilchrist* (1)] and this is kept up in the Indian Insolvency Statute of 1848 and the Presidency Towns Insolvency Act of 1909, the Provincial Insolvency Act has contented itself with an enlarged definition of the expression "property of the insolvent" by including under it any property over which the insolvent has a disposing power which he may exercise for his own benefit. In view of this difference and the terms of the definition clause, it has been held that in insolvencies governed by the Provincial Act, the son's interest must also be taken to vest in the Official Receiver when the father is adjudicated an insolvent. [See *Kuppuswami Goundan* v. *Marimuthu Goundan* (2) and *Narasimudu* v. *Basava Sankaran* (3)]. But the distinction does not seem to us to be

1. L R 17 Q B D 521. 2. (1924) 47 M L J 487.
3. (1924) 47 M L J 749.

of much consequence in view of their Lordships' reasoning in the present case as to the nature of joint family property and their opinion that the power of disposal contemplated by the definition clause is an *absolute and unconditional power* and not one like the Hindu father's, because the exercise of the latter is limited by the existence of antecedent debts not tainted by illegality or immorality.

It seems to us however by no means easy to follow the precise effect of the reservations and implications of the judgment. For instance, their Lordships observe that they do not intend to say one word which might have the effect of disturbing and raising doubts as to the decisions under the Civil Procedure Code, holding that in execution of a money decree against the father, the son's interest in the joint family property may be attached and sold. But they do not explain how, consistently with the reasoning in this judgment, it is possible to maintain that even when the sons are not parties to the decree, their interest in the family property can be covered by the expression "property belonging to the judgment-debtor or over which he has a disposing power which he may exercise for his own benefit" (S. 60, C. P. C.). It is certainly not sufficient to say that under the Hindu Law it is the pious duty of a son to pay his father's debts, for it may well be answered that as a matter of *procedure* this duty can be enforced only by impleading the sons in the suit and obtaining a decree against them. So long ago as in *Nanomi Babuasin's case* (4) it was definitely settled that even when the sons are not parties to the creditor's suit an execution sale of the judgment-debtor's right and interest may pass to the purchaser the *entirety* of the family estate and not merely the father's share or personal interest. In *Mahabir Prasad's case* (5) their Lordships held that the words "right, title and interest" of the judgment-debtor, may comprehend every interest which the judgment-debtor might have sold. These cases ignored the limitation now suggested, that the words relating to the debtor's power of disposition can only take in property, over which he has an *absolute* and *unconditional* power of sale. It seems to us extremely anomalous and inconvenient to hold that the same expression should have one scope in execution proceedings and a different scope in insolvency proceedings.

4. (1886) I L R 13 C 21 (P C), 5. (1889) I L R 17 C 589.

Again towards the end of their judgment their Lordships say, " It may be that under the provisions of S. 52 or in some other way, that property (*i. e.,* the whole joint family property) may in a proper case be made available for payment of the father's just debts. " But in the view that both in the definition clause and in S. 52 the power of disposal contemplated is an absolute and unconditional power, we are unable to see how the Official Receiver can in any case rely upon them in support of his claim to exercise the father's power of disposing of his son's interest in the family property ; and we can think of no other provision or principle on which such a claim could be rested.

As to the Indian decisions under the Statute of 1848, it is evident that their Lordships consider them to have been wrongly decided, though for the purpose on hand, they merely put them aside as having been decided under a different Statute. The judgment makes little or no reference to the course of decisions in India under the Acts of 1907 and 1909. Whether it be on the ground that the son's interest was part of the *property* of the insolvent or on the ground that it was covered by the *power* exerciseable by the insolvent, the course of Indian decisions has hitherto uniformly permitted the Receiver in the father's insolvency to dispose of the son's interest as well in the family property, except so far as the father's debts were not binding on the son. We can of course appreciate their Lordships' doubt whether when passing the Statute of 1848 (11 & 12 Vic. c. 21) the Imperial Parliament ever contemplated or intended that the real and personal estate of the insolvent " might be held to include the unpartitioned separate interest of a Hindu coparcener, who was not a petitioner, in the immoveable property of a joint family. " But we see no justification for any such doubt in respect of the intention to be imputed to the Indian Legislature when passing the Insolvency Acts of 1907 and 1909 ; for by that time there was a well established course of decisions on the point under the Civil Procedure Code and the same principle had been applied in more than one reported decision to the procedure in insolvency. The significance of this course of decisions is all the greater when it is remembered that up to 1907 all insolvencies in the mofussil were closely connected with execution proceedings. S. 354 of the Codes of 1877 and 1882 vested in the Receiver " all the insolvent's property except the particulars specified in the first proviso

to S. 266." That the Legislature took note of the wide interpretation placed by the Courts on the expression "insolvent's property" is clear from the fact that in framing the definition clause in the Provincial Insolvency Act of 1907 and the Presidency Towns Insolvency Act of 1909, it has incorporated the very words employed in S. 266, Civil Procedure Code.

Their Lordships profess to be startled at the idea that on the father's insolvency all the rights and interests of his son in the joint family property should vest in the Official Assignee. It has not startled anybody in this country for more than four decades; the surprise, if any, is certainly nothing compared to the feeling with which the course of their Lordships' early decisions on the doctrine of the son's pious obligation is said to have been received here.

The analogy of a firm or partnership some of whose members may have been adjudicated insolvents is obviously misleading ; because there is in that case nothing corresponding to the son's duty, no obligation on the part of the other members to pay for debts which they have not authorised or benefited by. The same remarks will apply to cases in which the question may arise as between brothers or other collateral relations. The light derived from Ss. 23 and 76 of the Act of 1909 does not seem to us to be very much. If the father himself sold some of the family property for the discharge of his debts, the remaining properties of the family will be held by him for the benefit of himself and his sons. Similarly, when such of the properties of the family as have not been sold by the Receiver re-vest in the insolvent father, (under S. 23), on the annulment of the adjudication or a surplus is made over to the father under S. 76, he will hold it for himself and his sons. When S. 23 defines the re-vesting by a reference "to the extent of his right or interest" it seems intended to contra-distinguish it from the interests of any alienees (from the Receiver) and not from the interests of the other members of the family, for no such reservation would be required in their case. Either their interests never passed out of them (on one hypothesis), or, if (on the other hypothesis) they did pass to the Official Receiver through the insolvent, they must go back to them only by way of reverter through the insolvent. According to the *ratio decidendi* of *Girdhari Lal's case* (6), the son's interest in the family property

6. (1874) 1 I A 321.

would seem to be regarded as the property of the father himself to the extent required for satisfying the latter's just debts. In the course of the judgment in that case, their Lordships first postulate that before the son's birth, the ancestral estate in the hands of the father would have been liable for his debts and they next proceed to ask, " did the son gain such an interest in the property as prevented it from being liable to pay a debt which his father had contracted ? " Referring to certain observations of Lord Justice Knight Bruce in *Hanuman Prasad's case* (7), their Lordships treat them as an authority " to show that ancestral property which descends to a father is not exempted from liability to pay his debts because a son is born to him. "

We are sorry to think of the amount of disturbance which the latest pronouncement of their Lordships is bound to give rise to in respect of titles created in the course of insolvency administrations during the last fifteen years. Innumerable transactions must so far have taken place on the footing that the Receiver in the father's insolvency could convey the son's interest as well. All such dispositions made within the last 12 years may now be questioned on the ground that so far as the son's interest was concerned they were void ; and if the sons happened to be infants, the period of possible disturbance may even be longer. It seems to us desirable that the Legislature should step in to obviate such litigations. Indeed, we shall not be surprised if, as the logical result of this judgment, it should be contended that on the father's insolvency, the son's interest in the family property would cease to be available for the general body of the father's creditors. If the Official Receiver cannot exercise the father's power of disposing of joint family property for the discharge of his debts, there is no procedure by which the father can be compelled to exercise that power and make the proceeds available to the creditors. In fact a question may arise whether after the father's interest had vested in the Official Receiver, the father himself has any power to sell the interest of his sons in the family property ; the vesting may well be regarded as bringing about a division in status between the father and the sons. We are aware that it has sometimes been held that notwithstanding an alienation of his undivided interest in the family property, the alienating co-parcener may yet retain his status

7. (1856) 6 M I A 393.

in the family and be entitled " to an increased share upon the death of another co-parcener. " [*Manjaya* v. *Shanmuga* (8)]. [*See* also *Maharajah of Bobbili* v. *Venkataramanjulu* (9)]. But we venture to doubt whether on an alienation of the share of the alienor in the *whole* family property (and not in a particular item) it will be right to regard the alienee as deriving (in the words of Bakewell, J.) only a right *in personam* and not a right *in rem*. It cannot be denied that the interest that has vested in the Receiver will not be defeated by the insolvent's death, *i. e.,* that the right of survivorship from the father to the sons will no longer exist. Nor does it seem possible to maintain at this time of the day that the interest thus vesting in the Receiver will fluctuate according to the increase or decrease that may subsequently take place in the number of the co-parceners. *Gurulingappa* v. *Nandapa* (10) proceeded on a different view. If this be so it is difficult to see any basis for holding that the father continues to be joint in status with the sons even after his interest had vested in the Receiver. We must however note in passing that *Gurulingappa* v. *Nandapa* (10) is quoted with approval by Bhashyam Aiyangar, J. in *Aiyagiri Venkatramayya's case* (11). In England the vesting of the estate in the Receiver on the bankruptcy of one joint-tenant, would seem to operate as a severance of the joint-tenancy. If the same rule is to hold good here, the son's interest cannot after the father's insolvency be the subject of any disposition by the father. It will then also follow that the creditor cannot, in execution of a decree obtained against the father alone, bring the son's interest to sale. *Krishnaswami Konan* v. *Ramaswami Aiyar* (12), *Lakshmana Chettiar* v. *Govindarajulu Naidu and another* (13) and *Rathna Naidu* v. *Aiyanachariar and others* (14). If a separate suit be brought against the sons, a question may arise whether after a division in status between the father and the sons, the sons can be held liable for the father's pre-existing debts. This has no doubt been decided in the affirmative in *Jagannatha Rao* v. *Viswesan* (15) but the point cannot yet be regarded as settled. Even if such a suit is maintainable, cases here have held that the sons cannot be sued *alone* during the lifetime of the father and the Court must grant permission

8. (1913) I L R 38 M 692.
9. (1914) I L R 39 M 365.
10. (1896) I L R 21 B 797.
11. (1902) I L R 25 M 690.
12. (1899) I L R 22 M 519.
13. (1910) 8 M L T 349.
14. (1908) 18 M L J 599.
15. (1924) I L R 47 M 621.

for impleading the father in such suit, on the principle of the decisions in *Ex parte Isaac* (16) and *Ex parte Mills ; In re, Manning* (17). If a decree had already been obtained against the father it is doubtful if the Court will be justified in permitting him to be impleaded in the second suit. If the father has been given his discharge in the Insolvency Proceedings, the son's interest cannot be proceeded against at all, according to the decision in *Narayanan Chetti* v. *Virappa Chetti* (18).

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## SUMMARY OF ENGLISH CASES.

DURNFORD *v.* BAKER, (1924) 2 K. B. 587.

*Husband and wife—Agency of necessity—Guilty wife—Divorce proceedings—Wife's costs—Liability of husband.*

Under the instructions of a wife, a solicitor commenced divorce proceedings against the husband on the ground of adultery and cruelty.The husband's solicitors admitted adultery but denied cruelty. Subsequently the husband came to know his wife had committed adultery and communicated the same to her solicitor whereupon the divorce proceedings were dropped. The wife's solicitor then brought an action for the costs incurred in the divorce proceedings against the husband. *Held*, under the Common Law, a guilty wife has no authority to pledge her husband's right for the service of a solicitor and the action did not lie.

*Quaere* : Whether the law is the same in respect of costs incurred by a guilty wife called upon to defend herself against proceedings brought by the husband ?

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WHITNEY *v.* COMMISSIONERS OF INLAND REVENUE, (1924) 2 K. B. 602.

*Super-tax—Non-resident assessee—Liability for—Service by post—Validity—Income-tax Act,* 1918, *S.* 7.

A citizen of the United States resident there is liable to pay super-tax in respect of annual profits and gains accruing to him in the United Kingdom. Where the Special Commissioners sent the assessee a notice by registered post requiring him to submit a return and on failure to do so, he was assessed by the Commissioners to the best of their judgment, *held*, the

16. (1870) L R 6 Ch App 58. 17. (1871) L R 6 Ch App 594.
18. (1916) 31 M L J 386.

notice was validly served and the assessment was perfectly valid." (1923) 2 K. B. 563 followed.

Super-tax is only an additional duty of income-tax but it does not follow that all statutory provisions with regard to income-tax or super-tax are the same. S. 7 of the Income-tax Act, 1918, considered. There is no *prima facie* implication that the area within which a notice may be served is the area of territorial jurisdiction as in the case of a writ.

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BRIGHTMAN AND CO. *v.* BUNGE Y BORN LIMITADA SOCIEDAD, (1924) 2 K. B. 619.

*Shipping—Charterparty—Agreement to load alternative cargo—Prohibition of loading a particular cargo—Effect on charterer—Time for arranging alternative cargo.*

Under the terms of a charterparty a ship was to be loaded with wheat, maize or rye. The charterers decided to load wheat and while they were doing it, the export of wheat was prohibited from the particular port. *Held,* the decision to load wheat did not prevent the charterers from loading one of the other cargoes nor did the embargo on wheat exempt them from their liability to perform the contract by loading one of the other cargoes. Where a particular length of time was fixed for the loading, the prohibition of wheat export entitled the charterers to a reasonable extension of time to make arrangements for loading another cargo or to wait and see if the prohibition would not be removed.

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DAVIES *v.* GWAUNCAEGURWEN COLLIERY, (1924) 2 K. B. 651.

*Workmen's Compensation Act* (1923), *S.* 7—*Workmen prohibited from going to particular place—Disregard of—Fatal accident—Liability of employer.*

The workmen in a certain colliery had been prohibited from going to a part of the premises which was in a dangerous condition and rails had been put up to prevent access. A workman arriving early on a dark morning switched on the electric light and then went into the prohibited area for hanging his coat, but while returning fell through an old machinery and was fatally injured. In a suit for compensation under the Act, *held,* the accident did not arise out of and in the course of the workman's employment. Scope of S. 7 of the Act of 1923 considered,

*In re* BJORNSTAD AND THE OUSE SHIPPING CO., LTD., (1924) 2 K. B. 673.

*Arbitration—Refusal to appoint arbitrator—Application to Court to appoint—Applicant a foreigner—Power to order security for costs.*

A contract with a foreigner contained a clause for reference to arbitration to settle disputes and differences. It provided for a single arbitrator in accordance with the Arbitration Act. Disputes arose and the foreigner gave notice to the other party to appoint an arbitrator. As this was not done, he applied to the Court under the Act to have an arbitrator appointed. *Held,* the applicant being a foreigner, the Court had the discretion to refuse an order except on condition that he gave security for costs.

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JONES *v.* OCEANIC STEAM NAVIGATION COMPANY, LTD., (1924) 2 K. B. 730.

*Conflict of laws—Contract with carrier—Exemption clause—Void by the law of the country where it was entered into—Express provision that English Law applied—Validity under English Law—Which governs—Injuries sustained—Notice of claim—Absence of—Effect.*

A person entered into a contract with a British Steam Navigation Company to be carried from New York to England in one of their ships. The contract contained a clause that the Company would not be liable for the negligence of the servants and also that no claim would be enforceable against the Company unless written notice of it was given within three days of the termination of the voyage. It also expressly provided that all questions arising under the contract would be governed by English Law. In a suit for damages for injuries sustained by the negligence of the Company's servants, *held,* though the exemption clause regarding non-liability for negligence of servants was invalid under the American Law, it was valid under the English Law. In a case of conflict of laws, the presumed intention of the contracting parties is the governing factor in determining which law applies and where the contract expressly stipulates that English Law would govern, it is the law to be applied.

Where in contravention of the terms of the contract, notice of the claim was not given within three days of the termination of the voyage, no action lay.

SUTCLIFFE *v.* CLIENTS INVESTMENT CO., LTD., (1924) 2 K. B. 746.

*Negligence—Owner of flat—Workman repairing and decorating—Defective balcony—Death due to fall—Liability of owner—Licensee and invitee—Difference.*

The lessees of a flat employed a firm of contractors to repair and decorate the same. After finishing the work, one of the workmen went to the balcony where the firm's advertisement had been hung up and when removing the board the balustrade gave way and the workman fell down and died. It was found that the balcony was in a dangerous condition and the owners knew of it or ought to have known it. In a suit by the widow of the deceased under the Fatal Accidents Act for compensation, *held,* the workman was in the position of a licensee with an interest whose rights were the same as those of an invitee and hence the defendants were liable as they knew or ought to have known of the defective condition of the balcony.

The responsibility of an occupier of premises to a bare licensee is merely not to set a trap for him, and apart from dangers which the occupier knows and the licensee does not know, the licensee must take the premises as he finds them. There is no material difference between the position of a licensee with an interest and an invitee both of whom stand in a better position than a bare licensee. In their case the occupier is bound to see the premises are reasonably safe and if they are not safe and the owners could know of their dangerous condition and negligently did not know of it, they are liable for damages caused.

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WATERHOUSE *v.* BARKER, (1924) 2 K. B. 759.

*Discovery—Banker's Books—Defendant's objection that they are of an incriminating nature—Procedure—Banker's Books Evidence Act, S. 7.*

Before the trial of an action, the plaintiff applied for inspection and to take copies of entries in certain Banker's Books. The defendant objected to the same on the ground the entries would incriminate him. *Held,* by the majority of the Court of Appeal (Scrutton, L. J. dissenting) the exercise of discretion under S. 7 of the Banker's Books Evidence Act is just the same as in ordinary cases of inspection before trial and leave to inspect ought not to be granted at that stage. (1892.) P. 137 and (1895) 2 Q. B. 669 followed.

*In re* JESSOP, (1924) P. 221.

*Will—Interlineation—Declaration of testator before and after execution—If admissible in evidence.*

Where a will contains unattested interlineations and additions, declarations by the testator after execution are not admissible to prove such addition or interlineation ; but declarations of intention made before execution are admissible to prove that the addition gave effect to such intention.

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THE JUPITER, (1924) P. 236.

*Shipping—Writ in rem—Sovereign State—Intervention of—Effect—Writ to be set aside—Immunity from process.*

A French Company issued a *writ* in *rem* claiming possession of a certain ship. A foreign Sovereign State entered appearance in protest and took out notice of motion to have the writ set aside. *Held,* the writ should be set aside as otherwise it would be contrary to the principles of international comity to make a foreign Sovereign appear in an English Court to defend an action.

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ANDREWS *v.* ANDREWS AND CHALMERS, (1924) P. 255.

*Divorce—Adultery—Proof of—Confession of wife—If admissible—Separation order—Presumption of non-access.*

In a petition for divorce on the ground of the wife's adultery, the only proof of the adultery was her own confession that the co-respondent was the father of her child. There was a separation order obtained from the Magistrates and the child could have been conceived only during the subsistence of the order. *Held,* the presumption of non-access and consequent bastardy arose and a decree *nisi* could be granted.

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KELLY *v.* BARRETT, (1924) 2 Ch. 379.

*Restrictive covenants—Enforcement of—Original attachment to road—Subsequent vesting of road in Local Authority —Effect—Damages—Injunction—When granted.*

The owner of certain premises through which a road ran sold a part thereof to others and one of the conditions of the sale was that buildings erected thereon should only be used as private residences. The road was subsequently taken over by the local authority, and the defendant who became by

subsequent purchase the owner of one of the houses fronting the road began to use it as a private nursing home. An action was begun by the representatives of the original covenantor and covenantee to enforce the original restrictive covenants. *Held*, after the road had become vested in the local authority, the successor in interest of the original owner has not got the surface of the road vested in himself but only an interest in the sub-soil, and hence has not such an interest in the road as entitles him to enforce the restrictive covenants. The land to which the benefit of a restrictive covenant can be attached must be land the occupation or enjoyment of which is liable to be affected by the prohibited user.

Essentials of a building scheme discussed.

*Per Tomlin, J.* :—In actions to enforce restrictive covenants, whether or not proof of damage is essential, where there is no priority of contract, the Court has to exercise judicial discretion with regard to granting an injunction and where there is no damage caused, damages in lieu of injunction ought not to be awarded. (Pollock, M. R. and Warrington, L. J. do not give a decision on this point but doubt its correctness).

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ATTORNEY-GENERAL *v.* WESTMINSTER CITY COUNCIL, (1924) 2 Ch. 416.

*Attorney-General—Powers of—Fiat at the instance of relators—Propriety of action—If can be gone into by Courts.*

A grave and important public duty is cast on the Attorney-General as to whether or not he will grant his fiat and allow an action to be brought either in his own name or at the instance of relators. If he decides it is a right and proper action to bring, he is entitled to bring the matter to Court, and the Court must accept the discretion which has been exercised by him and not consider if the action was properly laid.

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SHERWOOD *v.* TUCKER, (1924) 2 Ch. 440.

*Lease—Period of three years—Option to purchase within the period of three years—Renewal of lease—If option also renewed.*

A tenancy-agreement for a period of 3 years gave the lessee an option to purchase the property "during the three years" provided by the lease. The lease was subsequently renewed for a fresh term of three years. *Held*, reversing the decision of *Astbury, J.*, in (1924) 2 Ch. D. 42, the period for exercising the option was not thereby extended. In all such cases an essential distinction is to be drawn between the demise and the contract under which the option to purchase is given.

*Per Warrington, L. J.*—An option of purchase is not to be regarded as a provision incident to the relation of landlord and tenant but is a matter collateral and independent of it.

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ELLIS AND COMPANY'S TRUSTEE *v.* DIXON JOHNSON, (1924) 2 Ch. 451.

*Bankruptcy—Mortgage of shares—Bankrupt selling shares without knowledge of mortgagor—Trustee's action to recover balance from mortgagor—Set off—Date of ascertaining value of shares.*

A person with whom some shares had been deposited as security for moneys due sold the same improperly without the knowledge of his mortgagor and subsequently became bankrupt. The trustee claimed from the mortgagor the difference between the amounts due on accounts being taken and the amount realised by sale by the bankrupt. *Held* (by the majority of the Court of Appeal *Pollock, M. R.* dissenting) the value of the shares ought to be ascertained as on the day on which the Master's certificate was drawn up.

*Per Pollock M. R.*—As the bankruptcy put an end to the state of accounts between the parties, the value of shares should be calculated as on the date of the receiving order. The mortgagor has a right of set-off and if after set-off the balance is in his favour, he can prove for it in bankruptcy.

*Per Warrington, L. J.*—The bankruptcy of the mortgagee is an immaterial circumstance, but if it is, and the mortgagee is allowed to prove, his rights must be measured by the state of things at the date of the receiving order.

*Per Sargant, L. J.* :—A mortgagee or his assignee cannot recover his debt from the mortgagor except upon performing

his reciprocal obligation of reconveying the mortgaged property to the mortgagor. If through the unauthorised act of the mortgagee it has become impossible to restore the estate at law, the mortgagee loses the right to sue for the debt.

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## JOTTINGS AND CUTTINGS.

*Interruptions by Judges.*—Lord Hewart, the Lord Chief Justice, speaking at the banquet of the City Guild of Freemen at the Connaught Rooms, said one of the chief things, as it was one of the most difficult, a judge had to learn, was to hold his tongue. He had learned that lesson well ; he never made any remarks in Court.

Admiral Sturdee had said to them, 'Have a few cruisers.' He (Lord Hewart) ventured to say, 'Have a few judges.' It was part and parcel of the same scheme of protection. For if they did the things which they ought not to do, or left undone the things they ought to do, there was in existence a colossal insurance scheme represented by the Army and Navy on the one hand, and by the administration of justice on the other hand, which would bring the wrongdoer to book. It induced people to keep their contracts and refrain from doing wrong.

—*The Law Journal,* 13th December, 1924, p. 781.

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*The New Judges.*—The Lord Chancellor gave practical evidence of the urgency, in his view, of an increase in the strength of the King's Bench Division by making his recommendations to the King on the day after the two Houses of Parliament had agreed to the Address moved on behalf of the Government, praying for the appointment of two additional Judges. The appointment of Sir Hugh Fraser came as a surprise, but a most welcome surprise, to the profession, both branches of which have for very many years held him in the highest respect and esteem. If we may speak for the moment more particularly for the solicitors' branch of our profession, we would say that Sir Hugh Fraser has won the confidence and the regard of every one of its members who have had the advantage of instructing him, not merely, or even chiefly, by reason of the care and skill with which he dealt with every case in which he was concerned, but because of the infinite

patience, the unvarying courtesy, and the charm of manner which have always distinguished him. His professional eminence is, of course, unquestionable, and his reputation in the branch of the law which he has made peculiarly his own is almost, if not quite, unrivalled. The promotion to the Bench of a member of the Junior Bar—other than one of the Junior Counsel to the Treasury—is in itself a great tribute to the individual selected ; we recall at the moment no other case in recent years except that of Mr. Justice McCardie. Sir Hugh Fraser commences his career as a Judge with the cordial good wishes of the whole profession, which confidently expects that a most distinguished career at the Bar will be followed by an equally distinguished career on the Bench. The promotion of Sir William Finlay had been for some time anticipated in legal circles. He is practically unknown to a large proportion of the profession, and has hitherto suffered from what is, in the law, at times the undoubted handicap, paradoxical as it may seem to say so, of having a very famous father. The name of Finlay has for years meant to most of us Viscount Finlay, who is happily still able to employ a hale and vigorous old age in the service of his country. It is by no means an uncommon thing for the son of a Judge to become himself a Judge ; more than one of the present High Court Judges is the son of a former member of the Bench ; but it is in the nature of things very rarely that one who is still performing judicial duties can have the felicity of seeing his son sworn in as a member of the High Court Bench. That rare privilege has befallen Lord Finlay, and we have no doubt that he regards it as the culminating point of his long and distinguished life.

—*The Law Journal,* 20th December, 1924, p. 783.

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*The Legal New Year Honours.*—We note with pleasure that Sir Henry Duke receives the honour of a Barony. Sir Henry in a long career at the Bar, in Parliament, and as President of the Probate, Divorce and Admiralty Division, has earned the respect and esteem of the profession, and as President he has shown himself to be a worthy successor of the great Judges who have held that post. The honour of Knighthood is bestowed on Mr. Robert W. Dibdin, who was President of the Law Society last year, and who in that position has done

very much to advance the interests of solicitors. The late Irish Judiciary are honoured in the Baronetcy conferred on the Right Hon'ble T. F. Molony, late Lord Chief Justice, and the Right Hon'ble James O'Connor, formerly a Lord Justice of Appeal.

—*The Law Journal,* 3rd January, 1925, p. 1.

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*Solicitors in Fiction* :—During the Christmas vacation, in the dark afternoons by a cosy fire at home, one turns instinctively to Dickens. Where else can one find so intimate a description of the law and its myrmidons as they were in the last century ? In *Bleak House,* for instance, we find the old reserved family practitioner, Mr. Tulkinghorn, who acted for Sir Leicester Dedlock. ' The old gentleman is rusty to look at, but is reputed to have made good thrift out of aristocratic marriage settlements and aristocratic wills and to be very rich. He is surrounded by a mysterious halo of family confidences, of which he is known to be the sole depository. ' Then there are the solicitors in the famous suit of *Jarndyce* v. *Jarndyce*—Messrs. Kenge & Carboy, of Lincoln's Inn, with whom Mr. Guppy served as clerk, and there is Mr. Vholes, clad in black, buttoning up his long black gloves. Even these are not so well known as Messrs. Dodson and Fogg in *Pickwick,* and his opponent, Mr. Perker. Another interesting study of legal ways and characters of the time is to be found in Samuel Warren's *Ten Thousand a Year,* in which the author gives a firm of solicitors the picturesque name of Messrs. Quirk, Gammon and Snap. It is an interesting study for the Vacation, now that the Chancellor is ' up, ' and counsel and their clients, ' their blue bags stuffed out of all regularity of form, as the larger sort of serpents in their first gorged state, ' have returned to the official den. And surely, to come down to the present day, a solicitor is the central figure in the Forsite Saga.

—*The Law Journal,* 3rd January, 1925, p. 3.

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*Mr. Asquith's Peerage.*—But for the vicissitudes of Parliamentary elections Mr. Asquith would no doubt have preferred to remain a House of Commons' man to the end of his political career. The House of Commons is the appropriate place for the exercise of commanding qualities of statesmanship, and although there is a long list of instances—including

Robert Harley, in whose favour the Earldom of Oxford was last restored in 1711—in which Prime Ministers have received an Earldom as the reward of their services, the names of the younger Pitt, and Sir Robert Peel and Gladstone show that some of the greatest have preferred to remain commoners. For Mr. Asquith events have decided otherwise, and his elevation to the Peerage as Earl of Oxford—the title of the Harley family became extinct in 1853—is a fitting honour for one who, apart from any considerations of party politics, is the leading statesman of the day, and it also secures for the nation the continuance of his services in Parliament.

—*The Law Journal*, 31st January, 1925, p. 85.

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*Drunkenness* :—A good deal of discussion is going on as to the exact physical and mental condition which constitutes drunkenness. Sir James Purves-Stewart, Senior Physician to Westminster Hospital, in an address delivered on the 13th January before the Society for the Study of Inebriety, published in the *Lancet* of the 17th January, quotes Byrne's Law Dictionary as saying that 'a man may be held drunk for the purpose of one offence when he would not be held drunk for the purpose of another offence.' Practically this may be so, though we think a London Magistrate recently repudiated the distinction, and said that the condition of drunkenness must be the same for all legal purposes. In fact legal definitions do not seem to help much. In 'Wharton' drunkenness is 'intoxication with strong liquor ; habitual inebriety.' The latter words are of course wrong. A man may be drunk without being an habitual drunkard. Sir James Purves-Stewart suggests as a definition :—

'A drunk person is one who has taken alcohol in sufficient quantity to poison his central nervous system, producing in the ordinary processes of reaction to his surroundings a temporary disorder, which causes him to be a nuisance or danger to himself or others.'

And Sir James examined in detail the various signs and degrees of intoxication, and also specifies various states of disease which simulate some of those signs. His definition is, perhaps, rather for medical than lay guidance, but when an exact decision has to be given, it is the medical evidence that counts. Rough-and-ready tests, like ability to say 'British Constitution,' or 'terminological inexactitude' and 'sixty-sixth battery of artillery' do not furnish reliable guidance, and no

one would care to submit to the test of 'Leith police dismisseth us,' which we believe has been suggested; no doubt not seriously. The gist of Sir James Purves-Stewart's definition is 'nuisance or danger to himself or others.' In some circumstances nuisance is the chief consideration; in the motor-car offences, which are so numerous now, it is danger. Sir Francis Champneys in a letter to the *Times* of Thursday suggests that the difficulty will disappear if we drop the word 'drunk' and say 'the worse for drink.' But the question is only altered. 'How much worse?'

—*The Law Journal,* 31st January, 1925, p. 87.

## BOOK REVIEWS.

LEGAL PERSONALITY, by W. M. Geldart. Oxford University Press, 1924. 1*s.* 6*d.*

Though it is nearly 15 years since Professor Geldart delivered his inaugural lecture as Kinerian Professor, the subject of his discourse is still in the process of development and the Oxford University Press have done well to attract attention to the subject by re-issuing the lecture as a separate pamphlet. The Professor pleaded for the recognition in England of the German theory of 'Group personality' in respect of corporations, by pointing out that other conceptions were at best imperfect and by no means calculated to foster the healthy growth of corporate activity. He examined in turn the theories of fictitious personality of co-ownership, of trust and of contract on which it has been attempted to base the legal theory of corporations and pointed out that none of them could answer the theoretical and the practical needs of the situation quite so well and fully as the frank recognition of a real and organic existence distinct from that of the individuals composing the corporation. It seems to us not too early to assert that the recent course even of Judge-made law in England is tending more and more in the same direction.

THE JOURNAL OF THE SOCIETY OF PUBLIC TEACHERS OF LAW, 1924. Edited by H. F. Jolowiez, M. A., LL. B., and published by Messrs. Butterworth & Co.

This is the first number of the Journal which the Society resolved on more than a year ago, and, as observed by Professor Holdsworth, it is expected to serve as a permanent record of the Society's various activities in the promotion of the study

of law and the improvement of legal education. It is in the fitness of things that it opens with an address on 'Forward Tendencies in English Legal Education' by Professor Hazeltine, a former President of the Society, and this is followed by three articles on 'A Birmingham School of Law,' 'The Teaching of Industrial Law' and 'The Harvard Law School.' Professor Holdsworth (another of the Society's Presidents) contributes an article on 'Immunity for Judicial Acts' in the course of which he attempts to trace the history of the doctrine in the English Law.

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THE TAXATION OF COSTS IN THE HIGH COURT OF JUDICATURE AT MADRAS, by Mr. G. S. White, Deputy Registrar, Original Side, High Court, Madras. Printed by the Law Printing House, Mount Road, Madras, 1925 Price Rs. 3.

This is an excellent book which has been prepared with much care. It explains the principles of taxation of costs very clearly and almost every precedent, reported or unreported, is quoted by way of explanation. Mr. White's long experience as a Taxing Officer of the Original Side of the Madras High Court entitles him to write with authority on the subject and there can be no doubt that he has carried out the work exceedingly well. Every member of the Bar who practises in the High Court will find the book of much help to him in his daily work.

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TRADING WITH THE ENEMY, by Atulchandra Gupta, M. A., B. L., Vakil, High Court, Calcutta. Published by the University of Calcutta.

We have great pleasure in acknowledging the receipt of the above book which was originally a thesis submitted by the author to the Calcutta University. Although the law on the subject is traceable to the English Common Law, it has been very largely developed during the recent years of the great War when many questions came before the Courts for solution. Although the bulk of the decisions on the subjects dealt with are mostly English, there are also some decisions of the Indian Courts though based on English principles. The author has dealt with the subject in the course of five chapters under the following headings :—Emergence of the Rule in Common Law, Reasons for the Rule, Who is an 'Enemy', Trading

and Its Prohibition ; and English and Indian cases have been referred to in illustrating the rules on the subject.

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THE LAW OF CLAIMS, by N. V. Vaidyanathan, B. A., B. L.

This little book treats of a branch of Railway Law relating to the rights of the public and the Railway Company in the course of its duty as a carrier. We welcome a pamphlet of this nature which gives in a short compass the legal relations of the consignor, the consignee of goods and the Railway administration as carriers in respect of goods.

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SUBJECT INDEX TO INDIAN CASE-LAW, by T. G. Anantanarayana Aiyar, B. A., B. L., Part II. Re. 1.

We have great pleasure in receiving Part II of the Subject Index to Indian Case-Law (1811 to 1923) by T. G. Anantanarayana Aiyar, B. A., B. L.

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WORKMEN'S COMPENSATION ACT, by P. Hari Rao. Published by the Law Printing House. Rs. 1-8-0.

It is with pleasure that we announce the receipt of the Workmen's Compensation Act VIII of 1923 as amended by Act VII of 1924 with the rules made under the Act by the Government of India, the statement of objects and reasons, notes on clauses and the Joint Committee's report by Mr. P. Hari Rao, B. A., B. L., and published by the Law Printing House, Madras.

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THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT (ACT I OF 1925), by P. Hari Rao, B. A., B. L., High Court Vakil, Madras. Published by Chakravarthi & Co. Rs. 1-8-0.

This book gives the enactment which has lately given rise to so much controversy. It is very useful as it gives as appendices, the statement of objects and reasons to the Act, the Report of the Select Committee, the original Bill of 1922, the message of the Governor remitting some portions of it for reconsideration and the statement of the Governor-General accompanying his assent to the Act. There are also other appendices giving the texts of the Charitable and Religious Trusts Act, 1920, and the Religious Endowments Act of 1863. Judged from the matter that we have given, it will be found that this book will be found to be of immense use to all those having to deal with the subject.

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